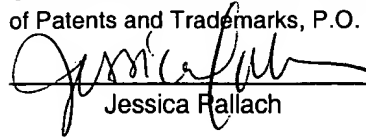


#5

Express Mail mailing label no. EV 189459518 US

Date of Deposit: July 24, 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450.

  
Jessica Rallach

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re Application of:** Allamanche et al.

**Docket No.:** SCHO0064

**Serial No. :** 09/914,371

**Art Unit:** Unassigned

**Filed:** August 24, 2001

**Examiner:** Unassigned

**Title:** DEVICE AND METHOD FOR PRODUCING AN ENCODED AUDIO  
AND/OR VIDEO DATA STREAM

July 24, 2003

Assistant Commissioner for Patents  
Mail Stop PCT  
Office of PCT Legal Administration  
P.O. Box 1450  
Alexandria, VA 22313-1450

**TRANSMITTAL**

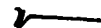
Dear Sir:

Enclosed for the above-referenced patent are the following:

1. Renewed Petition under 37 CFR 1.47(a);
2. Copy of Dismissed Petition dated 03 June 2003;
3. Executed Declaration (2 pages);
4. Executed Assignment (1 page) and Recordation Cover Sheet (3 pages); and
5. Return Postcard

The Commissioner is authorized to charge any additional fees, or credit any overpayments, to Deposit Account No. 07-1445 (Order No. SCHO0064). A copy is enclosed for this purpose.

Respectfully submitted,



Michael A. Glenn  
Reg. No. 30,176

Customer No. 22862

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re application of:** Allamanche et al.

**Docket No.:** SCHO0064

5 **Serial No:** 09/914,371

**Art Unit:** Unassigned

**Filed:** August 24, 2001

**Examiner:** Unassigned

10 **Title:** Device and Method for Producing an Encoded Audio and/or Video Data Stream

July 24, 2003

15 Commissioner of Patents and Trademarks  
Mail Stop PCT  
Office of PCT Legal Administration  
P.O. Box 1450  
Alexandria, VA 22313-1450

20

**RENEWED PETITION UNDER 37 CFR 1.47(a)**

25 Sir:

This is in response to the Dismissed Petition dated 03 June 2003 for the above-referenced patent application.

30 Regarding item (2); please find enclosed the executed declaration form by inventor Niels Rump. Also enclosed is the assignment and recordation cover sheet to be recorded in the Assignment Division.

Accordingly, all requirements are met.

35

Please charge any fees due to Deposit Account No. 07-1445 (Order No. SCHO0064). Please contact the undersigned if there are any further questions or concerns.

40

Respectfully Submitted,



Michael A. Glenn

Reg. No. 30,176

45 Customer No. 22862

COPY

03 JUN 2003



UNITED STATES PATENT and TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
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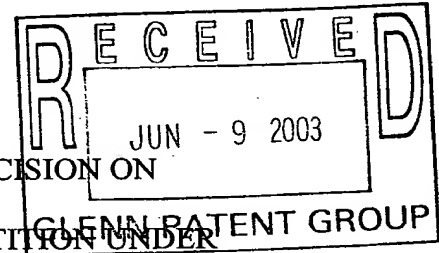
GLENN PATENT GROUP  
3475 Edison Way. Ste L,  
Menlo Park, CA 94025

In re Application of  
Allamanche et al  
PCT No.: PCT/EP99/09978  
Application No: 09/914,371  
Int. Filing Date: 15 December 1999  
Priority Date: 24 February 1999  
Attorney's Docket No.: SCHO0064  
For: Device and Method for Producing  
An Encoded Audio and/or Video data Stream

: DECISION ON

: PETITION UNDER

: 37 CFR 1.47(a)



This is in response to the "PETITION BASED UPON UNAVAILABILITY OF INVENTOR (37 CFR.1.47/MPEP 409.03)" filed on 14 December 2001. The requisite \$130 petition fee has been charged to petitioner's deposit account.

**BACKGROUND**

On 15 December 1999, applicants filed international application PCT/EP99/09978, which claimed priority of an earlier European application filed 24 February 1999. A DEMAND was filed on 22 September 2000 prior to the expiration of 19 months from the priority date electing the United States. Accordingly, the thirty-month (30) time period for paying the basic national fee in the United States of America expired at midnight on 24 August 2001.

On 24 August 2001, applicants filed for entry into the national stage in the United States of America. Filed with the application was, inter alia, the requisite basic national fee. No executed oath or declaration from the inventors accompanied the application at such time. A copy of the intentional application was transmitted on 31 August 2000 to the USPTO from the International Bureau.

On 19 August 2001, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a), and (b), identifying the application by International application number and international filing date" must be submitted within two months from its 19 August 2001 date of mailing or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

DOCKETED

By:

Date:

*[Signature]*  
6/10/03

Application No: 09/914,371

On 14 December 2001, petitioner filed the present petition accompanied, inter alia, an executed Declaration without the signature of one of the four inventors, i.e., without the signature of Niels Rump.

### **DISCUSSION**

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Furthermore, section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.) **Proof of Unavailability or Refusal**, the relevant sections states, in part:

#### **INVENTOR CANNOT BE REACHED:**

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47.

Furthermore, the fact that an inventor is hospitalized and/or is not conscious is not an acceptable reason for filing under 37 CFR 1.47. 37 CFR 1.43 may be available under these circumstances. See MPEP § 409.02. Such a petition under 37 CFR 1.47 will be dismissed as inappropriate.

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included statement of facts. It is important that the statement contain facts as opposed to conclusions.

Petitioner has satisfied requirements (1), (3), and (4) of 37 CFR 1.47(a). However, requirement (2) has not been satisfied.

The averments of Fritz Schoppe are insufficient to support a finding that the nonsigning inventor, Mr. Niels Rump could not be found after diligent effort because Mr. Schoppe's declaration fails to show diligent effort to locate inventor Rump. Mr. Schoppe has not shown that he has searched for the above non-signing inventor's new address by using a broad search in the internet, which would show diligent effort by Mr. Schoppe to find the nonsigning inventor since Mr. Schoppe currently appears to have limited his search to Erlangen.

Moreover, it is not clear from the petition that it was Mr. Schoppe who performed the items listed in paragraph 2 of his declaration, and has first hand knowledge of those facts as required by MPEP Section 409.03(d). If Mr. Schoppe was not the person who performed the actions listed in paragraph 2, petitioner will need to submit statements, with specific facts on the actions referred to by paragraph 2 by persons who have first-hand knowledge of such facts.

In addition although, petitioner has submitted copies of the cover letters and returned envelopes mailed to Mr. Rump, petitioner has not provided English translations of them.

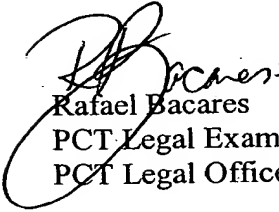
Consequently, at this time it can not be concluded that the nonsigning Mr. Rump could not be found after diligent effort.

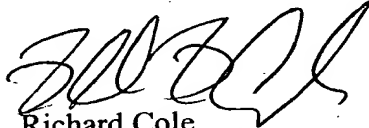
### CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

  
Rafael Bacares  
PCT Legal Examiner  
PCT Legal Office

  
Richard Cole  
PCT Legal Examiner  
PCT Legal Office

Telephone: (703) 308-6312  
Facsimile: (703) 308-6459

DECLARATION FOR PATENT APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name;

I believe I am the original, first, and sole inventor (if only one name is listed below) or an original, first, and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**DEVICE AND METHOD FOR PRODUCING AN ENCODED  
AUDIO AND/OR VIDEO DATA STREAM**

the specification of which (check one) ☐ is attached hereto, or ☒ was filed on August 24, 2001 as Application Serial No. 09/914,371 and was amended on \_\_\_\_\_ (if applicable).

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, Section 1.56(a).

=====

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)

Priority Claimed  
Yes No

PCT/EP99/09978 PCT 15 December 1999  
Number Country Day/Month/Year Filed

X \_\_\_\_\_

19907964.1 Germany 24 February 1999  
Number Country Day/Month/Year Filed

X \_\_\_\_\_

=====

POWER OF ATTORNEY: As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith:

MICHAEL A. GLENN, Reg. No. 30,176  
DONALD M. HENDRICKS, Reg. No. 40,355  
KIRK WONG, Reg. No. 43,284  
CHRISTOPHER PEIL, Reg. No. 45,005  
JULIA THOMAS, Reg. No. 52,283

SEND CORRESPONDENCE TO:

GLENN PATENT GROUP, 3475 Edison Way, Suite L, Menlo Park, CA 94025

=====

I hereby claim the benefit under Title 35, United States code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, Section 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Application Ser. No. \_\_\_\_\_ Filing Date \_\_\_\_\_ Status: Patented, Pending, Abandoned \_\_\_\_\_

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor: ERIC ALLAMANÇHE

Inventor's signature \_\_\_\_\_ Date \_\_\_\_\_

Residence Sulzbacherstrasse 41, D-90489 Nuernberg, Germany

Post Office Address Same

Citizenship Germany

Full name of second joint inventor: JUERGEN HERRE

Inventor's signature \_\_\_\_\_ Date \_\_\_\_\_

Residence Am Eichengarten 11, D-91054 Buckenhof, Germany

Post Office Address Same

Citizenship Germany

Full name of third joint inventor: JUERGEN KOLLER

Inventor's signature \_\_\_\_\_ Date \_\_\_\_\_

Residence St. Johann 6/113, D-91054 Erlangen, Germany

Post Office Address Same

Citizenship Germany

Full name of fourth joint inventor: NIELS RUMP

Inventor's signature X Niels Rump X 2008-07-08

Residence 16 Chatsworth Avenue, Bromley, Kent BR1 1DP, Great Britain

Post Office Address Same

Citizenship Germany

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Reel #

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Corrective Document

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Frame # 0694

**Conveyance Type**

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☐

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License

☐

Change of Name

☐

Merger

☐

Other

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Departmental File

☐

Secret File

**Conveying Party(ies)**

☒

Mark if additional names of conveying parties attached

Name (line 1)

Eric

Execution Date  
Month Day Year

9/17/01

Name (line 2)

Allamanche

**Second Party**

Name (line 1)

Juergen

Execution Date  
Month Day Year

9/17/01

Name (line 2)

Herre

**Receiving Party**

☐

Mark if additional names of receiving parties attached

Name (line 1)

Fraunhofer-Gesellschaft Zur Foerderung

Name (line 2)

Der Angewandten Forschung E.V.

Address (line 1)

Address (line 2)

Leonrodstrasse 54

Address (line 3)

Muenchen

Germany

80636

City

State/Country

Zip Code

☐

If document to be recorded  
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Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231



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Area Code and Telephone Number

Name

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**Pages**

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**Application Number(s) or Patent Number(s)**

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Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

**Patent Application Number(s)**

**Patent Number(s)**

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor.

Month Day Year

**Patent Cooperation Treaty (PCT)**

Enter PCT application number  
only if a U.S. Application Number  
has not been assigned.

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**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment:  
Deposit Account

Enclosed ☐

Deposit Account ☒

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

☒

No

☐

**Statement and Signature**

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.*

Michael A. Glenn



7/24/03

Name of Person Signing

Signature

Date

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PATENT

Conveying Party(ies)

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Enter additional Conveying Parties

Name (line 1) Juergen

Execution Date  
Month Day Year

9/17/01

Name (line 2) Koller

Execution Date  
Month Day Year

7/8/03

Name (line 1) Niels

Name (line 2) Rump

Execution Date  
Month Day Year

Name (line 1)

Name (line 2)

Receiving Party(ies)

☐ Mark if additional names of receiving parties attached

Enter additional Receiving Party(ies)

Name (line 1)

Name (line 2)

Address (line 1)

Address (line 2)

Address (line 3) City State/Country Zip Code

Name (line 1)

Name (line 2)

Address (line 1)

Address (line 2)

Address (line 3) City State/Country Zip Code

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Application Number(s) or Patent Number(s)

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Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

Patent Number(s)



## ASSIGNMENT

WHEREAS, we, Eric Allamanche, Juergen Herre, Juergen Koller, and Niels Rump, hereinafter referred to as "ASSIGNORS", have invented certain new and useful improvements, as described and set forth in the below-identified application for United States Letters Patent:

Title of Invention: DEVICE AND METHOD FOR PRODUCING AN ENCODED AUDIO AND/OR VIDEO DATA STREAM

U.S. Serial No. 09/914,371      Filed: August 24, 2001

WHEREAS, Fraunhofer-Gesellschaft Zur Foerderung Der Angewandten Forschung E.V., having its principal place of business at Leonrodstrasse 54, Muenchen, Fed Rep Germany 80636, hereinafter referred to as "ASSIGNEE", are desirous of acquiring the entire right, title, and interest in the said invention and application and in any Letters Patent which may be granted with regard to the same;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that, for One Dollar (\$1.00) and other good and valuable consideration, ASSIGNORS have sold, assigned, and transferred, and by these presents does sell, assign, and transfer unto the said ASSIGNEES, and ASSIGNEE'S successors and assigns, all right, title, and interest in and to said invention, said application for United States Letters Patent and any Letters Patent which may be hereafter granted on the same in the United States and all countries throughout the world, including any divisions, renewals, continuations in whole or part, substitutions, conversions, reissues, revivals, prolongation, or extensions thereof, said interest to be held and enjoyed by said ASSIGNEE as fully and exclusively as it would have been held and enjoyed by said ASSIGNORS had this assignment and transfer not been made, for all time.

ASSIGNOR(S) further agree that they will, without charge to said ASSIGNEE, but at ASSIGNEE'S expense, cooperate with ASSIGNEE in the prosecution of said application and/or applications, execute, verify, acknowledge, and deliver all such further papers, including applications for Letters Patent and for the reissue thereof, and instruments of assignment and transfer thereof, and will perform such other acts as ASSIGNEE may lawfully request, to obtain or maintain Letters Patent for said invention and improvement in any and all countries, and to vest title thereto in said ASSIGNEE, or ASSIGNEE'S successors and assigns.

IN TESTIMONY WHEREOF, ASSIGNORS have hereunto signed their names to the assignment on the date indicated below.

\_\_\_\_\_  
Eric Allamanche

\_\_\_\_\_  
Date

\_\_\_\_\_  
Juergen Herre

\_\_\_\_\_  
Date

\_\_\_\_\_  
Juergen Koller

x Ni. Rump  
Niels Rump

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

MARK BIDE

July 8th 2003